



FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No 13-184; FCC 20-178; FRS 17362]

Modernizing the E-Rate Program for Schools and Libraries

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission (Commission) amends E-Rate invoicing rules to enhance the efficient administration of the program while ensuring that program participants have sufficient time to complete the invoice payment process.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: James Bachtell, Wireline Competition Bureau, 202-418-7400 or TTY: 202-418-0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Modernizing the E-Rate Program for Schools and Libraries (Order) in WC Docket No. 13-184; FCC 20-178, adopted December 9, 2020 and released December 10, 2020. Due to the COVID-19 pandemic, the Commission's headquarters will be closed to the general public until further notice. The full text of this document is available at the following Internet address:

<https://docs.fcc.gov/public/attachments/FCC-20-178A1.pdf>.

I. INTRODUCTION

1. The efficient administration of the E-Rate program depends on providing program participants flexibility to procure needed services and equipment in a timely and cost-effective manner, while ensuring that safeguards are in place to administer the program effectively and protect against waste, fraud and abuse. Since the program's inception, the Commission and the program's administrator, the Universal Service Administrative Company (USAC), have continuously worked to achieve the appropriate balance in meeting these goals. This Order

builds on those efforts by amending the invoicing rules to enhance the efficient administration of the program while ensuring that program participants have sufficient time to complete the invoice payment process.

2. Specifically, the Commission permits applicants and service providers up to 120 days to submit invoices after USAC issues a Revised Funding Commitment Decision Letter approving a post-commitment request or granting an appeal of a previously denied or reduced funding request. In so doing, the Commission facilitates program participants' ability to meet evolving needs—by changing service providers or submitting service substitutions, for example—without jeopardizing their ability to obtain reimbursement or necessitating a Commission waiver proceeding. Consistent with this change, the Commission grants relief to certain program participants that were excluded from an earlier invoicing relief order and provides a one-time waiver opportunity for program participants that were unable to timely submit an invoice because they were awaiting a post-commitment decision.

3. In taking these actions, the Commission promotes the goals of the E-Rate program by ensuring that its subsidies continue to assist students and library patrons in getting access to essential communication and broadband services without applicants and service providers facing unfair obstacles when submitting claims for reimbursement.

II. DISCUSSION

4. The Commission amends the rules to provide greater flexibility to applicants and service providers by providing them 120 days to submit an invoice after USAC issues a Revised Funding Commitment Decision Letter approving a post-commitment request or granting an appeal regarding a previously denied or reduced funding request. The Commission also extends the relief provided in the *2018 Invoicing Relief Order* (DA 18-188) to applicants and service providers that were unable to invoice while awaiting a post-commitment decision from USAC and timely filed a request for waiver, regardless of whether they requested and received a one-time, 120-day invoice deadline extension. Finally, the Commission provides a one-time

opportunity for program participants to seek a waiver if they have not previously done so if they can demonstrate that were unable to timely submit an invoice because they were awaiting a post-commitment decision. These filings must demonstrate good cause to waive the 60-day waiver filing deadline.

5. *Post-Commitment Invoice Period.* The Commission amends the E-Rate program rules to allow applicants and service providers to submit invoices for payment up to 120 days after USAC issues a Revised Funding Commitment Decision Letter approving a post-commitment request or granting an appeal of a previously denied or reduced funding request. The Commission did not fully consider all of the potential scenarios that might affect an applicant or service provider's ability to invoice when it codified the invoicing deadline in 2014. Such delays could be caused by technical issues or involve requests that include particularly complicated appeals or investigations. The Commission finds that providing applicants and service providers 120 days to invoice under these circumstances will not greatly delay the ability of the Commission or USAC to efficiently administer the program. Several members of the E-Rate community have requested the Commission take action, including the State E-Rate Coordinators Alliance (SECA).

6. The Commission amends the rule now without notice and comment in accordance with the exception to the Administrative Procedure Act (APA) for procedural rules. This change in the rules will be effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Upon effectiveness, if USAC grants an appeal or approves other post-commitment requests submitted by an applicant or service provider, it must provide applicants and service providers 120 days from the date of the resulting Revised Funding Commitment Decision Letter to complete invoicing.

7. The Commission limits the rule change to post-commitment requests or appeal decisions that result in a Revised Funding Commitment Decision Letter approving the request. Therefore, applicants or service providers appealing partially approved funding requests should

submit invoices for the partial funding before the original invoice deadline expires because USAC will not provide additional time to invoice if the appeal is denied.

8. *Relief for Program Participants Outside the Scope of the 2018 Invoicing Relief Order.* The Commission waives the existing invoicing rule for any applicant or service provider that was unable to invoice while awaiting a post-commitment decision and filed a pending request for waiver of this rule with the Wireline Competition Bureau (Bureau) for funding year 2016, regardless of whether the applicant or service provider requested and received a one-time, 120-day invoice deadline extension. The Commission's rules may be waived for good cause shown. The Commission finds, as in the *2018 Invoicing Relief Order*, that the circumstances here require a waiver of the invoicing rules because the applicants and service providers made nearly every attempt to comply with the invoice deadline rules, but were blocked from timely completing the invoicing process because a predicate request or function had not been completed (or could not be completed) by USAC's systems.

9. The Commission also directs the Bureau to extend this relief to any applicant or service provider that similarly faced this issue and filed a pending request for waiver of this rule due to a post-commitment request approval or a successful appeal decision received after the invoice deadline for funding years 2014-2015 and funding year 2017 or later. Because all of these applicants and service providers had approved funding commitments and were unable to take the last step to file invoices due to circumstances outside of their control, there are no concerns about waste, fraud, or abuse. The Commission therefore directs the Bureau to evaluate and grant these pending waiver requests on a case-by-case basis consistent with the Order. For program participants that receive a waiver, the Commission directs USAC to issue a Revised Funding Commitment Decision Letter and provide 120 days from the issuance of that letter for applicants or service providers to submit or resubmit invoices.

10. Finally, the Commission recognizes that there may be other applicants and service providers that faced the same circumstances as the others granted relief in the Order but did not

file a waiver request with the Commission. To ensure that similar facts lead to similar outcomes, other applicants or service providers facing similar circumstances may request within 60 days from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], a waiver demonstrating that they were unable to timely invoice due to a delay in the processing of a post-commitment change or resolution of a successful appeal decision for funding years 2014 or later. The Commission finds that 60 days is an appropriate length of time to give applicants and service providers to file their waiver requests. The Commission's current rules require that appeals and waiver requests be submitted within this time frame, which provides petitioners an adequate opportunity to respond meaningfully to adverse decisions. Because these filings are likely being submitted beyond the 60-day time period for waiver requests, each pleading must contain an explanation of the reason they did not previously file a timely waiver request and, if the Bureau finds good cause, it should waive the filing deadline in § 54.720(a) of the Commission's rules. The Bureau is directed to evaluate and grant these waiver requests to the extent affected parties demonstrate that they were unable to submit timely invoices under the circumstances discussed in the Order and demonstrate good cause to waive the deadline to timely file a waiver request.

III. PROCEDURAL MATTERS

A. Paperwork Reduction Act Analysis

11. This document does not contain any new or modified information collection requirements subject to PRA. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

B. Congressional Review Act

12. The Commission will not send a copy of the Order to Congress and the

Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the adopted rules are rules of agency organization, procedure, or practice that do not “substantially affect the rights or obligations of non-agency parties.” This is a procedural rule establishing a deadline for filing invoices.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED that, pursuant to the authority found in sections 1 through 4, 201-202, 254, 303(r) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 154, 201 through 202, 254, 303(r), and 403, the Order IS ADOPTED.

14. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151-154 and 254, and §1.3 of the Commission’s rules, 47 CFR 1.3, that §§ 54.514 and 54.720(a) of the Commission’s rules, 47 CFR 54.514 and 54.720(a), ARE WAIVED to the extent provided herein.

15. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151-154 and 254, and §§ 0.91 and 1.3 of the Commission’s rules, 47 CFR 0.91, 1.3, the Commission directs the Wireline Competition Bureau to GRANT RELIEF to similarly situated applicants to the extent described herein.

16. The rule changes adopted in the Order constitute either a rules of agency organization, procedure and practice and are not subject to the notice and comment and effective date provisions of the Administrative Procedure Act. Accordingly, these rule changes are EFFECTIVE [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FEDERAL COMMUNICATIONS COMMISSION

Marlene Dortch,
Secretary.

Editorial note: This document was received for publication by the Office of the Federal Register

on January 5, 2021.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, and 1302 unless otherwise noted.

2. Amend § 54.514 by revising paragraph (a) to read as follows:

§ 54.514 Payment for discounted services.

(a) *Invoice filing deadline.* Invoices must be submitted to the Administrator:

- (1) 120 days after the last day to receive service;
- (2) 120 days after the date of the FCC Form 486 Notification Letter; or
- (3) 120 days after the date of the Revised Funding Commitment Decision Letter approving a post-commitment request made by the applicant or service provider or a successful appeal of a previously denied or reduced funding request, whichever is latest.

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